

FINAL



Town of Southern Shores

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Planning Board Meeting

April 20, 2015

5:30 p.m., Pitts Center

MEETING MINUTES

I. CALL TO ORDER:

Chairperson Sam Williams called the meeting to order at 5:30 pm. Planning Board Members Gray Berryman, Jay Russell, ETJ Member John Finelli, alternate member David Neal, and Town Planner Wes Haskett were present. Alternate member David Neal filled the vacant seat created by Mike Florez.

II. PLEDGE OF ALLEGIANCE:

Chairperson Sam Williams led the Pledge of Allegiance.

III. APPROVAL OF AGENDA:

Jay Russell motioned to approve the agenda. Gray Berryman seconded the motion. The motion passed unanimously (5-0).

IV. APPROVAL OF MINUTES:

Chairperson Williams suggested minor amendments to the draft minutes. Gray Berryman motioned to approve the minutes of the December 15, 2014 Planning Board Meeting as amended. Jay Russell seconded the motion. The motion passed unanimously.

V. PUBLIC COMMENT:

None

VI. OLD BUSINESS:

None

VII. NEW BUSINESS:

A. ZTA-15-01: Minimizing of Tree Clear Cutting

Chairperson Williams introduced the Zoning Text Amendment (ZTA) application and called on Wes Haskett to present the Staff Report. Following the presentation of the Staff Report, Chairperson Williams asked why the administration and enforceability of the ZTA were concerns for Town Staff. Wes Haskett explained that resources are limited and the amount of time dedicated to a lot disturbance permit application would at least double.

Chairperson Williams called on the applicant, Tom Welch, to address the ZTA. Mr. Welch explained to the Board why he felt the ZTA was necessary and how he tried to keep it simple in order to increase the chances of approval. The ZTA is not a

comprehensive ordinance but it was drafted to be consistent with the policies established in the Town's currently adopted Land Use Plan. Mr. Welch thanked the Board for considering the application.

Chairperson Williams opened the floor for public comment.

Fred Newberry stated that he supported the proposal and explained the importance of preserving the maritime forest. The ZTA is not perfect but it is a good start which is enforceable and wouldn't require a great amount of resources. He recommended that the Board support the draft ordinance.

Debbie Newberry stated that she supported the draft ordinance and explained the importance of preserving the maritime forest and how clear cutting on property adjacent to hers has negatively impacted her property. The draft ordinance is a great start that will help the community.

Mark Martin stated that he was a member of the Outer Banks Homebuilders Association and a former member of the tree committee that worked on establishing a tree/vegetative management ordinance. As a builder, it is important to look at which trees to save and determine which ones are healthy. He explained that the amount of area to be cleared when developing a lot is around 60% to 80% and most builders try to minimize clear cutting. He stated that he is not in favor of the draft ordinance and he believes that builders do a good job in preserving trees.

Andy Ward stated that the ZTA is an emotional reaction to a perception that in reality is nonexistent. Clear cut lots without landscaping are null and residents on the other side of town fight to see sunshine. Residents are embarrassed and ashamed of the information being posted on Facebook and the personal attacks being made about the Town Council and Town Staff. He encouraged the Board to not accept any of the proposed ordinance.

Robin Morgan stated that she is a former Planning Board Chairperson and member of the tree committee that worked on establishing a tree/vegetative management ordinance. She agreed that the Town shouldn't adopt the draft ordinance because it won't apply to those who have developed their lots and requiring approval to remove any trees over 6 inches in diameter is getting out of control.

Vincent Ferretti stated that he doesn't live in a maritime forest and explained how the maritime forest is separate from the rest of the town. The draft ordinance would increase costs to the Town in order to administer and enforce it and it would increase the cost of building due to the required trees to be shown on the survey. The draft ordinance also doesn't apply to developed lots and it should apply to the whole town. In addition, there is no appeal process in the proposed ZTA.

Joe Van Gieson stated that Andy Ward's statement that clear cutting is null is not true. Clear cutting is increasing, just look at lots on North Dogwood Trail and South Dogwood Trail. Increasing the lot disturbance inspection time from 30 minutes to an hour is not unreasonable.

Patrick Gilbert stated that he supports the draft ordinance and explained how the Southern Shores Civic Association observed and documented lot disturbance inspections. The lot disturbance inspections focused on stormwater and how it would affect the adjoining property owner and did not focus on tree removal. Builders usually

adhered to lot disturbance requirements however, there were several instances when they didn't.

Chairperson Williams closed public comment.

David Neal explained that he loves trees but is concerned with how broad the draft ordinance is and not being able to do what you wish with your own property. Tom Welch explained how the ordinance isn't perfect and that he is open to any suggested language the Board may have to add to the draft ordinance.

Jay Russell explained how houses are getting larger and larger. The result is an approach of the maximum lot coverage of 30%. Not only are lots being cleared for the large houses, the lot has to be cleared for a pool, parking, and utilities. Tom Welch stated that the Town Planner/Code Enforcement Officer would make the decision on which trees can be removed and which trees can remain.

Gray Berryman stated that the draft ordinance would allow a pool but it would not allow an irrigation system and asked if any consideration had been given to allowing formal landscaping. Mr. Welch stated that he is open to any suggested language the Board may have to add to the draft ordinance.

Chairperson Williams stated that this is the third draft of the proposed ordinance. His concerns include: a lack of set guidance for limits on what area can/cannot be cleared (e.g., how big can a lawn be), what is the basis for saving trees larger than 6 inches in diameter, the cost of the required survey to mark all trees greater than 6 inches in diameter (the survey should show trees to be preserved and not trees to be removed and preserved), is the owner or contractor responsible when unauthorized trees are removed, how the six criteria are to be used in determining which trees can and can't be removed and does the Town Planner/Code Enforcement Officer have the skills to determine this or would the Town have to hire a tree expert to make the determination, when a tree emergency is declared and a tree is removed, what does the Town Planner/Code Enforcement Officer do with the information after one is reported (i.e., is this unnecessary reporting), are violations assessed to the contractor or property owner, requiring 30 days to replant would not work well during the winter months, and there is no established appeal process.

Mr. Welch responded by explaining how the 6 inches in diameter requirement is common in tree ordinances across the state. Language specifically for lawns is not in the draft ordinance but it is important to keep as many trees as possible and it could be negotiated. The property owner would be responsible when unauthorized trees are removed. The burden of meeting the six criteria would be on the property owner. Property owners have a legal obligation to notify the Town Planner/Code Enforcement Officer when they declare a tree emergency. Language can be added to the draft ordinance to address abatement during winter months. Anyone can appeal any decision made by the Town Planner/Code Enforcement Officer and the provisions of the draft ordinance would be included. Mr. Welch thanked the Board for considering the application and stated that he is open to the Board's suggestions.

Gray Berryman stated that he is not in favor of the draft ordinance and explained how everyone loves trees but also want the freedom to develop and landscape their property. There is common ground in the intent of what is being proposed.

Jay Russell stated that he is not in favor of the draft ordinance and explained how it would require additional cost from property owners and the Town.

David Neal stated that the draft ordinance would enable the Town to tell property owners when they can and can't remove trees on their property. The Town's resources are limited and the administration and enforcement of the draft ordinance would all fall on the Town Planner/Code Enforcement Officer.

Chairperson Williams stated that it still not clear that clear cutting causes problems. The types of trees to be used when replanting is not addressed. 6 inches in diameter may be too big or too small. The administration and enforcement of the draft ordinance would be an increased cost to the Town which could result in a tax increase.

Chairperson Williams motioned to recommend disapproval of the application to the Town Council. Jay Russell seconded the motion. The motion passed unanimously.

Chairperson Williams motioned that ZTA-15-01 is consistent with the Town's currently adopted Land Use Plan and that the action taken is reasonable and in the public's interest. Gray Berryman seconded the motion. The motion passed unanimously.

VIII. PUBLIC COMMENT:

Andy Ward stated that his comments were not related but are regarding a toxic situation and stated that he had submitted two written complaints for the banners posted at 226 North Dogwood Trail and 57 Hickory Trail. Photos of the banners were submitted to David Owens with the UNC Institute of Government and he agreed that the banners were in violation of the Town's sign ordinance. He explained how the tree removal at the intersection of North, South, and East Dogwood is unforgivable but the property owners have no right to put the banners up in the form they are in now.

IX. PLANNING BOARD MEMBER COMMENTS:

David Neal stated that he agrees and disagrees that the signs are offensive.

Gray Berryman stated that he hopes everyone can work together on a solution to the current tree removal problems with an educational approach.

Chairperson Williams thanked everyone for attending the meeting.

X. ANNOUNCEMENTS:

Wes Haskett stated that the three year terms for Sam Williams, Mike Florez, Betty Corbin, David Neal, and John Finelli will expire on June 30, 2015. He will be contacting each person to see if they are interested in serving another term.

XI. ADJOURNMENT:

Gray Berryman motioned to adjourn. Jay Russell seconded the motion. The motion passed unanimously and the meeting adjourned at 7:15 p.m.

ATTEST:

RESPECTFULLY SUBMITTED:


Sam Williams, Chairperson


Wes Haskett, Town Planner

STAFF REPORT

To: Southern Shores Planning Board
Date: April 15, 2015
Case: ZTA-15-01
Prepared By: Wes Haskett, Town Planner/Code Enforcement Officer

GENERAL INFORMATION

Applicant: Thomas J. Welch
17 Skyline Rd.
Southern Shores, NC 27949
Requested Action: Amendment of the Town Zoning Ordinance by adding Section 36-177, Minimizing of Tree Clear Cutting to Chapter 36, Article VI.

ANALYSIS

The applicant is proposing a Zoning Text Amendment (ZTA) to amend Article VI, General Provisions by adding language to establish an ordinance regarding minimizing of tree clear cutting. The proposed ordinance would prohibit the removal of all trees greater than 6 inches in diameter, measured at 4.5 feet above the ground and trees may only be removed for the construction of buildings, driveways, and any other lot work authorized by the Town Planner/Code Enforcement Officer. Trees to be removed and preserved are to be shown on the site plan and survey that accompany a Lot Disturbance and Stormwater Management permit application. Following the lot disturbance period, preserved trees shall be maintained in a healthful and sound condition as a continuing condition of the site plan approval and a condition of compliance therewith and occupancy thereof. Trees may be removed after the lot disturbance period for any lot work authorized by the Town Planner/Code Enforcement Officer.

With respect to violations and penalties, when a tree is removed in violation of the ordinance, a warning citation will be issued to the offender giving 30 days to abate the violation. A replacement tree shall be required to abate the violation. The size, species and quantity of a replacement shall be determined by the Town Planner/Code Enforcement Officer. If the violation is not abated, the Town will assess \$500 each day the violation continues to exist.

The proposed ordinance also establishes exceptions for tree emergencies when a tree has become an imminent danger or hazard to persons or property or when a tree must be removed in order to perform emergency repair or replacement of public or private utilities. In the case of an exception, the person taking such action shall inform the Town Planner/Code Enforcement Officer within seventy-two (72) hours after a tree is removed in a tree emergency.

The Town's currently adopted Land Use Plan contains the following Policies and Action Items that are consistent with the proposed ordinance:

- **Action Item 2-b:** The Town shall encourage the use of low impact development techniques and sound environmental preservation practices for all new development, remodeling and redevelopment within Southern Shores.
- **Action Item 17-b:** Continue enforcement of the Lot Disturbance provisions of the Town's Zoning Ordinance.
- **Policy 26:** Promote open space, tree protection, and natural vegetation diversity.
- **Action Item 26-b:** Encourage lot preparation methods that preserve natural vegetation

and minimize clear cutting.

RECOMMENDATION

Town Staff has determined that the proposed amendment is consistent with the Town's currently adopted Land Use Plan. However, there are concerns with the administration and enforceability of the proposed ordinance given the Town's current resources and additional concerns with allowing anyone to remove a tree or trees of any size without any documentation by claiming that a tree emergency existed. Town Staff recommends that the Planning Board consider these concerns when making its recommendation to the Town Council. Please note that prior to adopting or rejecting any zoning amendment, the Planning Board shall adopt a statement describing whether its action is consistent with the adopted Town Comprehensive Land Use Plan and explaining why the Planning Board considers the action taken to be reasonable and in the public interest. That statement is not subject to judicial review.